

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MAURA HOGAN LARKINS,

Charging Party,

v.

CHULA VISTA ELEMENTARY EA, CTA,

Respondent.

Case No. LA-CO-1106-E

Administrative Appeal

PERB Order No. Ad-322

April 11, 2003

Appearance: Maura Hogan Larkins, on her own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Maura Hogan Larkins (Larkins) of a Board agent's refusal to disqualify herself. After reviewing the charge, the request for disqualification, related documents and correspondence, and documents submitted by Larkins on appeal, the Board affirms the Board agent's refusal to disqualify herself and remands the case for further processing, consistent with the following discussion.

DISCUSSION

The Charge and Request for Disqualification

The charge in the instant case alleged that the Chula Vista Elementary EA, CTA (CVVEEA) violated Larkins' right to "equal representation" when it provided her with an attorney through its legal services benefit program whom Larkins alleges had a conflict of

interest. Larkins alleged that this conduct violated Educational Employment Relations Act (EERA) Section 3543.6.¹

In a letter transmitted by facsimile on June 24, 2002, Larkins requested that the Board agent disqualify herself from the instant case and two others, Case Nos. LA-CO-1091-E and LA-CE-4382-E, which had previously been dismissed by the same Board agent (hereinafter “the dismissals” or “the earlier cases”).²

Larkins’ request for disqualification relied on an argument that inferences should be drawn from allegations regarding the Board agent’s handling of the two dismissals. Larkins contended that, in making the dismissal decisions in the earlier cases, the Board agent ignored many of Larkins’ allegations, refused to accept documents offered in support of the charges,

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.6 provides:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

² The charges in Case Nos. LA-CO-1091-E and LA-CE-4382-E were dismissed on June 6, 2002, and Larkins filed documents with PERB’s Appeals Office to commence appeals of the dismissals on June 28, 2002. They are currently pending before the Board.

failed to take as true the allegations she did consider, and relied on evidence supplied by the California Teachers Association (CTA) to resolve factual disputes. Because of these alleged previous improprieties, Larkins said she believed that the Board agent had prejudged the instant case and could not give fair and impartial consideration to her charges.

In addition, Larkins' June 24, 2002, letter communicated her concern that the Board agent may have previously issued unfair practice complaints on behalf of CTA, with which CVEEA is affiliated, and may have developed a "close working relationship" with CTA lawyers. Larkins said, "I am concerned that you may have represented CTA in the past, and in fact might have been representing CTA concurrently with your consideration of my case." Larkins' letter concluded by requesting that an attorney who had not represented CTA be assigned by PERB to investigate her case.

Board Agent's Rejection Of the Disqualification Request

In a letter dated June 26, 2002, the Board agent denied Larkins' disqualification request. The letter began by reporting that the Board agent previously had explained to Larkins with regard to the dismissals that "it was not necessary to attach supporting documentation as long as your amended charges described the conduct represented by the documents." The Board agent also said, "I informed you that at this stage of the PERB unfair practice charge process, where your alleged facts conflicted with those of respondents, your allegations would be deemed true."

The Board agent's letter observed that Larkins had not previously informed her "that your amended charges did not contain a complete statement of the respective parties' alleged unlawful conduct" in the earlier cases. Further, according to the June 26, 2002 letter, Larkins did not identify any false factual allegations by CTA that were improperly credited by the

Board agent or any factual allegations in the charge that were ignored by the Board agent in the dismissals. The Board agent informed Larkins that arguments directed to those issues should be raised in appeals from the dismissals. After also stating that she had “never represented CTA,” the Board agent rejected Larkins’ request that she disqualify herself in the instant case.

On June 30, 2002, Larkins sent the Board agent another letter, renewing her request for disqualification, emphasizing her belief that the union-provided lawyer was biased against her, and asserting her belief that the Board agent had developed a “positive working relationship” with CTA lawyers through the course of work on earlier cases, which biased the Board agent with respect to the instant case. Larkins also opined that Board agents should not be allowed to work on cases brought against and on behalf of the same parties.

Larkins also stated in her June 30, 2002 letter:

You say that my allegations would be deemed true “where your allegations conflicted with those of the Respondents.” We did not discuss the possibility that Respondents’ statements might be deemed true if I failed to contradict those statements. Is this so? If so, it is completely unfair. In my case, CTA was allowed to keep its answer secret from me. I could not possibly contradict every false statement they might possibly make.

She then recounted factual issues from the dismissed cases and said the Board agent had improperly relied on misrepresentations from respondents, warranting her disqualification in the instant case.

The Board agent replied by letter, dated July 11, 2002, stating that the request for disqualification had been denied on June 26, 2002.

Larkins sought Board review of the Board agent’s refusal to disqualify herself in the instant case and requested permission to submit oral argument. By correspondence dated

February 4, 2003, the Board granted special permission to appeal the Board agent's refusal to disqualify herself and denied the request for oral argument.³

Larkins' Appeal

Renewing her arguments on appeal, Larkins argues, in essence, that the Board agent gave insufficient weight to documents filed by Larkins and relied on misrepresentations by the Chula Vista Elementary School District to resolve factual disputes which erroneously resulted in dismissal of her earlier two charges. From those alleged improprieties, Larkins urges the Board to infer that the Board agent cannot be relied upon to conduct a fair and impartial investigation in the instant case.

Larkins also renews her argument for disqualification of the Board agent on grounds of an alleged conflict of interest based on purported previous work related to cases involving CTA. More generally, Larkins takes issue with PERB's practice of allowing the same Board agents to process charges brought against and on behalf of the same parties.

The sole issue before the Board in this appeal is whether the Board agent erred by refusing to disqualify herself in the instant case when requested by Larkins. As neither a complaint nor a dismissal have issued, the merits of the unfair practice charge are not before the Board.

PERB Regulation 32155 states, in pertinent part:

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned.

³ The February 4, 2003 letter also disposed of Larkins' requests for oral argument and for permission to appeal the Board agent's refusal to disqualify herself in Case Nos. LA-CO-1091 and LA-CE-4382, which are not at issue herein.

Larkins has failed to persuade the Board that “it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned.” Her contentions regarding the dismissal cases, that the Board agent failed to properly credit factual allegations in support of the charges and relied on undisclosed representations by the CVEEA to resolve factual disputes, are subjects properly raised through appeals to the Board in those earlier cases. Absent some evidence of subjective bias or material disparity between the Board agent’s procedure in Larkins’ cases and other similar cases, there would be no basis to impute more than a procedural error to the Board agent. Larkins’ remedy for those alleged errors, were the Board to find the claims meritorious, would be reversal and other appropriate orders in the two dismissal cases. If similar allegations were raised in the handling of the instant case upon its completion, they too could be addressed and remedied on appeal, if meritorious.

The Board finds that the Board agent’s explanation of the charge-processing procedure in her June 26, 2002, letter to Larkins correctly sets forth the standards governing the initial determination of whether Larkins has stated a prima facie case. Specifically, the Board agent accurately explained the important principle that, “at this stage of the PERB unfair practice charge process [i.e., the investigation and prima facie case determination], where your alleged facts conflicted with those of Respondents, your allegations would be deemed true.” (See San Juan Unified School District (1977) EERB⁴ Decision No. 12.)

Literal application of the principles described by the Board agent will prevent improper dismissal of the charge based on representations by the respondent of which the charging party

⁴ Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

is unaware or to which the charging party has not been allowed to respond. Larkins' allegations do not provide any reason to believe the Board agent will not apply the rules she has articulated in the instant case.

Accordingly, the Board finds the Board agent properly denied the request for disqualification and remands the matter for completion of the investigation and prima facie case determination process described by the Board agent in her correspondence with Larkins.

ORDER

The Board DENIES Maura Hogan Larkins' (Larkins) appeal of the Board agent's rejection of Larkins' request for disqualification in Case No. LA-CO-1106-E and REMANDS the case for further processing of the charge.

Members Baker and Whitehead joined in this Decision.